In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
CLARA HOLTE.
No. 628.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this case and assign it for hearing at an early date during the present term.

The case is before the court upon writ of error sued out by the United States under the so-called Criminal Appeals Act of March 2, 1907 (34 Stat. 1246), and presents the sole question, as stated by the court below (R. 6), "can a woman or girl who is the subject of a transportation in violation of the white-slave traffic act be indicted with the person who caused her to be transported as a coconspirator?"

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The court below held that she could not be so indicted, and therefore sustained the demurrer which had been interposed (R. 6).

The effect of the decision is to cut the Government off from what it conceives to be one of the most potential proceedings in bringing about the prohibition of the traffic denounced in the so-called White Slave Traffic Act of June 25, 1910 (36 Stat. 825), and an early solution of the question raised will materially facilitate future operations under the law, the violations of which constitute one of the most prolific classes of Federal criminal prosecutions.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

NOVEMBER, 1914.

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BRIEF FOR THE UNITED STATES.

STATEMENT.

This case was brought here under the "Criminal Appeals Act" (34 Stat. 1246).

The defendant and one Laudenschleger were indicted under section 37 of the Penal Code of the United States for conspiring to have the latter commit the offense defined in section 2 of the "White-Slave Traffic Act" (36 Stat. 825). This defendant first entered a plea of guilty. That plea was subsequently withdrawn, and a demurrer interposed. The court sustained the demurrer, holding that the statutes involved did not permit a woman who was the subject of the unlawful transportation, though a guilty participator, to be indicted as a conspirator with the person who caused her to be transported. (R., 5, 6.) The above ruling presents the sole question to be determined by this court.

Memo: Save as specially otherwise noted italics are ours; and the "White-slave traffic act" is referred to as "White-Slave" act.

THE STATUTES.

Section 37, of the Penal Code, so far as material, reads:

> SEC. 37. If two or more persons conspire * * * to commit any offense against the United States * * * and one or more of such parties do any act to effect the object of the conspiracy, each of the parties * * * shall be fined, etc.

Section 2 of the "White-Slave" act, so far as material, reads:

> SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate * * * commerce * * * any woman or girl, for the purpose of prostitution or debauchery, or for any other immoral purpose; * * * or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket * * * to be used by any woman or girl in interstate * * * commerce * * * in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, *whereby such woman or girl shall be transported* in interstate * * * commerce * * * shall be deemed guilty of a felony, etc.

ARGUMENT.

THE WOMAN SUBJECTED TO AN UNLAWNUL INTERSTATE TRANSPORTATION MAY (IF A GUILTY PARTICIPATOR) BE INDICTED AS A CONSPIRATOR, WITH THE PERSON CAUSING HER TO BE TRANSPORTED.

A. Principle misapplied by lower court.

The court below misapplied the doctrine that, where a concert of action or a plurality of agents is essential to complete an offense, such agents cannot be indicted for a conspiracy to commit that offense. The misapplication lay in so construing the "White-Slave" act as to bring the offenses therein defined within the operation of that doctrine, the limits of which are thus stated by Mr. Wharton in his work on Criminal Law (11th Ed.):

> **Sec. 1602. Where concert is necessary to offense conspiracy does not lie.** *When* to the idea of an offense *plurality of agents is logically necessary,* conspiracy, which assumes the voluntary accession of a person to a crime of such a character that it is aggravated by a plurality of agents, cannot be maintained. As crimes to which concert is necessary (*i. e.*, which cannot take place without concert), we may mention dueling, bigamy, incest and adultery * * * We have here the well known distinction between *concursus necessarius* and *concursus facultativus;* in the latter of which the accession of a second agent * * * *is an element added to its conception;* in the former of which the participation of

> two agents is essential to its conception; * * * In other words when the law says "a combination * * * to effect a particular end shall be called, if the end be effected, *by a certain name*" it is not lawful for the prosecutor to call it by some other name; and when the law says "such an offense * * * shall have a certain punishment" it is not lawful for the prosecution to evade this limitation by indicting *the offense* as conspiracy. Of course when the offense is not consummated, and the conspiracy is one which, by evil means a combination of persons is employed to effectuate, *this combination* is, of itself indictable. And hence persons combining to induce others to commit bigamy, adultery, incest or dueling, do not fall within this exception, and may be indicted for conspiracy.

The doctrine rests upon the principle that where the substantive offense *requires combination* for its commission the *same combination* can not be also used as the basis of a conspiracy charge; *i. e.*, the prosecutor may not split the substantive offense into elements and frame an indictment on one element. But where the substantive offense *may* be consummated *without a combination*, the addition of that element furnishes the *additional ingredient* distinguishing conspiracy from the substantive offense and makes it lawful to indict for either *or both*.

The reasoning of the three cases alone relied on by the court below (the *Chadwick*, *Dietrich*, and *N. Y. C. & H. R. R.* cases) seems so squarely opposed to

its conclusion, that they may be properly canvassed as in support of the argument for the Government.

Chadwick v. *United States* (6th C. C. A.), 141 Fed. 236, 237, properly limits the application of the doctrine. The drawer of a check was indicted for conspiracy to violate section 5208, Revised Statutes, by planning with a bank officer that the latter should certify the former's check, though he had no funds on deposit. The court, speaking through the late Mr. Justice Lurton, said:

> There are certain offenses in which a concert of action between two persons, is logically *necessary* to the completion of the crime; that is, *crime which cannot take place without concert.* Among such kind of offenses Mr. Wharton mentions adultery, bigamy, incest, and duelling. [Here the court quotes a part of the author's text, *supra.*] [And, speaking of the Dietrich case, 126 Fed. 664, relied on by the court below in the case at bar, it continues]:
>
> The case affords an illustration of the proper application of the principle referred to by Mr. Wharton, and is broadly distinguishable from that now under consideration.
>
> * * * Dietrich could not agree to receive a bribe *unless some other person should agree to give him one.* * * * Concert of action was therefore essential to the violation of section 1781, charged as the purpose of the conspiracy.
>
> To violate section 5208, *a plurality of guilty agents* is not necessary. A check may be certified when the drawer has no funds upon

> deposit, and the officer certifying it be guilty of violating the law * * * *without the guilty complicity of the drawer or any other person.* In short, *the very fact that Mrs. Chadwick could not be guilty of any violation of Section 5208 * * * takes the case outside of the rule which forbids an indictment for conspiracy, where a plurality of agents is* logically *necessary* to *complete the crime, which it was the object of the conspiracy to commit.* * * * (citing cases). In *Scott* v. *U. S.*, cited above, the conspiracy was to violate section 5209 * * * by causing certain false entries to be made upon the books of the bank. * * * The overt act charged was the making of the false entries by the hand of the defendant, who was not an agent, servant, employe, or officer of the bank. But it was also averred that both defendants participated in the act, and that the entries were in law made by the bank officer through the hand of another—his co-conspirator. The court held the indictment good. The errors assigned to the present indictment, based upon the objection we have been considering, are not well taken.

As the bank officer could not falsely certify until some one should draw and present a check for certification, so Laudenschleger could not unlawfully transport until there was a woman to be transported. In each instance the drawer or the woman *might* or *might not* be guilty participators. The cases are in parallel.

In *United States* v. *N. Y. C. & H. R. R. Co.*, 146 Fed. 303, upon a charge of conspiracy to cause the railroad company to give rebates, the court, though holding against the possibility of conspiracy, nevertheless said:

> *But when the concurrent action* of two persons *is necessary to perpetrate a certain crime*, and all that they do is to agree to do it, and do it, it seems difficult to claim that their *agreement* to act is in law a conspiracy, and their *act* a distinct crime, and that the agreement to act can be punished more severely or differently from the act itself. I think the offense of giving or receiving rebates is such an act. *It requires the concurrence of two* persons. A rebate can not be given unless there is some one who agrees to receive it and who does receive it, and cannot be received unless there is some one who agrees to give it and who does give it.

The *Dietrich* case is sufficiently distinguished in the *Chadwick* case, *supra*. These three cases are in truth decisive—but *decisive against the application of that doctrine to this case.*

A further case in point is *Ex parte Lyman*, 202 Fed. 303, 304. Section 138 of the Penal Code made it an offense for an officer having a prisoner in custody "to voluntarily suffer such prisoner to escape." The escaping prisoner and officer were indicted for conspiracy. The court said:

> To voluntarily permit a prisoner to escape does not, necessarily, require a common purpose between the officer and the prisoner. For

example: the prisoner escapes through what he deems the neglect of the guard, when, in fact, the officer has been induced by a third person to suffer or permit the escape. In such case, the officer and the third person would be conspirators, and the prisoner not. That a prisoner might conspire with the jail guard for the escape of all his fellow prisoners, but that, the moment the prisoner himself becomes a benefiting party to the scheme the conspiracy is destroyed, seems a lame conclusion.

The Queen v. *Whitchurch and others*, 24 L. R. Q. B. Div. 420, 422, is pertinent. The question and its solution are thus stated:

> *Lord Coleridge, C. J.* I am of opinion that the conviction ought to be affirmed.
>
> The question arises on an indictment charging a woman, who, we must take it, was not in fact with child, with conspiring with others to procure abortion on herself. There might have been something to be said if the indictment had been for an attempt to procure abortion, for in that case the words of the section would not apply. This, however, is an entirely different case. The prisoner is charged with the offence of conspiracy—that is, a combination to commit a felony—and I cannot entertain the slightest doubt that if three persons combine to commit a felony they are all guilty of conspiracy, *although* the *person on whom the offence was intended to be committed could not, if she stood alone, be guilty of the intended offence.* * * *
>
> *Hawkins, J.* I am of the same opinion.

> The prisoner is not charged with using instruments, or administering drugs to herself, for the purpose of procuring abortion, but with conspiring with others to procure abortion. It is clear that she could not lawfully call in other persons to do that which when done by them is a crime punishable with penal servitude. What she did was a conspiracy to commit a criminal act.

In *State* v. *Crofford*, 133 Iowa, 478, 480, the statute provided:

> "If any person with intent to produce the miscarriage of any pregnant woman, wilfully administer to her any drug or substance whatever, or, with such intent, use any instrument or other means whatever, unless such miscarriage shall be necessary to save her life," etc.,

Holding that the woman upon whom the abortion was committed could be a conspirator, the court said:

> * * * This language indicates the design of the lawmakers to treat the woman upon whom the act is perpetrated as the victim, and she can not be guilty of *this* crime. * * * This is in harmony with the conclusion reached by courts generally that she is not to be regarded as an accessory or accomplice (citing cases). But it *does not follow that she may not engage in an unlawful conspiracy with another to perpetrate the offense upon herself.* Section 5059 of the Code declares that if any two or more persons conspire and confederate together to commit a felony, they are guilty of the crime of conspiracy. *This offense is distinct*

> *from the crime which it is the object of the conspiracy to commit, and the acquittal of the one is not a bar to the prosecution of the other.* (Cases.) *Though she may not be guilty of committing an abortion upon herself, it is a crime for another to do so,* and, *if she conspires with others to perform the act, there is no escape from the conclusion that she is a coconspirator,* and that her declarations * * * are admissable in evidence against another conspirator on trial for the commission of the substantive crime.
>
> See also *State ex rel. etc.,* v. *Heugin,* 110 Wisc., 189, 244; *Hannon & Nugent* v. *Comm.,* 14 Pa. St., 226, 227; *Thomas* v. *United States,* 156 Fed., 897, 903; *Drew, Sheriff etc.* v. *Thaw,* No. 514 Oct. Term 1914, decided Dec. 21, 1914.)

In the last case the court said:

> "It is perfectly possible * * * to enact that a conspiracy to accomplish what an individual is free to do, shall be a crime."

That *concursus necessarius* is not an essential to the offense defined by section 2 of the "White-Slave" act is demonstrated by the following excerpt from the report of the House committee thereon:

> It is the *purpose of the proposed laws* * * * to *protect women* and girls *against this criminal traffic, by* providing for *the punishment of those engaged in that traffic,* and by regulations, etc. Extensive investigation * * * discloses the fact that in many cases * * * Liquor, trickery, deceit, fraud, and the use of

> force are resorted to by the procurer to place the girl under his power. In some cases, those who have been induced to come to large cities, are first introduced to the house of prostitution under the influence of liquor; in others, the procurer enters into a pretended marriage with his victim; in many cases * * * the inducement is the promise of legitimate employment * * * The investigations * * * conclusively show * * * that for sometime after they are first unwillingly forced to take up a life of prostitution the victims would at once abandon it if it were possible for them to do so. (Page 11, H. Rep. No. 47, 61st Cong., 2d sess.)

In *Hoke* v. *United States*, 227 U. S. 320, this court said:

> What the act condemns is transportation obtained or aided, or transportation induced in interstate commerce, for the immoral purposes mentioned.

In *Bennett* v. *United States*, 194 Fed. 630, 632 (affirmed by this court in 227 U. S. 333), the court (6th C. C. A.) said:

> The primary thing forbidden is the inducing * * * to come in to the state, *with unlawful purpose by the inducer and* in aid of such unlawful purpose, *but without direct regard to the* innate character or *purpose of the person induced. It is this primary thing, and the incidental transportation* * * * which are forbidden and penalized.

In *United States* v. *Westman*, 182 Fed. 1017–1018, the court said:

> The law in its intendment, is aimed at the transportation of certain persons, or the procuring to be transported such persons, from one state to another, for evil, immoral, unlawful, and pernicious purposes, etc.

These cases negative the idea that guilty complicity on the part of the woman transported is a necessary ingredient of the substantive offense. That being so, there is no principle of law rendering it legally impossible for a woman to conspire with a man to unlawfully transport her. In many cases the woman might be more active than the man in producing that result, especially if actuated by an ulterior motive of personal gain. It would be unfortunate if the deterrent influence, arising from dread of possible punishment for herself, should she *incite others* to commit this crime upon her, were to be wholly removed.

As Laudenschleger and any third person could have been guilty of conspiracy in planning to accomplish the unlawful transportation of Holte, can it be said that the participation of the latter in that plan should give immunity to the other two? On the other hand, on what theory could they be held if Holte was discharged, or either of them be then punished, if the transportation never took place, though the ticket had been bought?

Suppose the "White-Slave" act had contained this additional clause—

> or who shall buy for her own use in going, shall use in going, or shall go, in interstate commerce for any such purpose—

would it then be seriously contended, in the face of the above decisions and of the *Gavieres case, infra*, that either Laudenschleger, Holte, or any third person criminally planning with either or both for the unlawful transportation of Holte, could not be proceeded against for conspiracy after the purchase of the ticket (or even after the mere purchase of a wardrobe if bought for the unlawful purpose), even though the main offense was never accomplished because the plan was interrupted before Holte could take the journey? While the presence or absence of the assumed clause would be most material, as to Holte, if her case were being considered under section 2, it is of no moment when considered under section 37, *supra*.

The court below recognized that the active "presence or concurrence" of the woman was unnecessary. And that concession demonstrates the impossibility of applying the doctrine of "concert of action" as elucidated in the cases it relied on.

B. The True Doctrine.

In the last analysis the question resolves itself to this: Is the offense of conspiracy to commit the main offense *legally identical* with *that offense* as defined by section 2 of the "White-Slave" act?

If identical, then because section 2, *supra*, does not attempt to punish the woman transported, she may not be punished for the *same offense* under the name of "conspiracy." If not identical, she *may* be so punished, if a guilty party to a *criminal plan* for her own unlawful transportation.

What then is the test of legal identity? A fixed rule for its determination has been repeatedly announced *by this court*. If the act prohibited by each statute *demands* for its accomplishment the doing of the *same things*, then there is legal identity. If, however, any element is demanded by either, that is not essential to the other, then they are separately punishable as different offenses, even though the elements of both may be furnished by the same single happening. (And indeed, this is the very principle announced in the *Crofford* case, last above quoted.)

In *Gavieres* v. *United States*, 220 U. S. 342, the plaintiff in error was sentenced for insulting a public officer in violation of the Penal Code of the Philippine Islands. He had previously been convicted, on account of the *very same words and conduct*, under a city ordinance of Manila, punishing boisterous behavior. He plead double jeopardy against the second charge, insisting he could be punished but once for the same single act. The court said:

> The question therefore is, are the offenses charged, and of which a conviction has been had in the municipal court and in the Court of First Instance, identical. * * * It is true that the acts and words set forth in both

charges are the same; but in the second it was charged, as was essential to conviction, that the misbehavior in deed and words was addressed to a public official. In this view we are of the opinion, *that, while the transaction charged is the same in each case, the offenses are different.* * * * This case (*Morey* v. *Comm.*, 108 Mass., 433), was cited with approval in *Carter* v. *McClaughry*, 183 U. S., 367, 395. In the *Carter case*, speaking of the identity of offenses charged, this court said: "The offenses charged under this article were not one and the same offense. This is apparent if the test of identity of offenses, that the same evidence is required to sustain them, be applied." *The first charge alleged "a conspiracy to defraud,"* and the second charge *alleged "causing false and fraudulent claims to be made," which were separate and distinct offenses, one requiring certain evidence which the other did not. The fact that both charges related to and grew out of one transaction made no difference.* In *Burton* v. *United States*, 202 U. S., 344, 381, * * * this court said: * * * "The plea will be vicious if the offenses charged in the two indictments be perfectly distinct in point of law, *however nearly they may be connected in fact.*" (italics the courts) * * * it was necessary to aver and prove the insult to a public official * * * in his presence * * *. Without such charge and proof, there could have been no conviction in the second case. The requirement of *insult to a public official was* lacking in the first offense. Upon the charge, under the

> ordinance, it was necessary to show that the offense was committed in a public place * * *; the insult to a public official need only be in his presence * * *. Each offense required proof of a fact which the other did not. Consequently a conviction of one would not bar a prosecution for the other. * * * While it is true that the *conduct of the accused was one and the same, two offenses resulted, each of which had* an element not embraced in the other.
>
> (See also *Heike* v. *United States*, 227 U. S., 131, 144; *United States* v. *McAndrews Co.*, 149 Fed., 836.)

C. The application of the rule.

The case is not within the exception of "*concursus necessarius.*" The rule of *diversity* of *offenses*, and *not* the above exception must be applied. The case at bar responds completely to every test under the diversity rule.

The indictment charges that defendants "agreed that *Laudenschleger* should * * * transport * * * (her) in interstate commerce" and get her a railroad ticket to be used by her in riding from Barrington, Ill., to Milwaukee, Wis., "for the purpose of *prostitution, debauchery,* and other immoral practices." (R. 1, 2.) The averments as to allowing herself to be "induced and *coerced*" may be disregarded as surplusage because (1) they are no part of the offense defined by section 2, and the Government does not rely on section 3 at all; and (2), they are

legally impossible in the case of this guilty conspirator.

The statute, section 2, *supra*, is satisfied by proof of the unlawful transportation, without *any concert* of purpose. Whereas section 37, *supra*, is satisfied only by concert, *i. e.*, unlawful plan and overt act, but without any transportation. The element of actual transportation is necessarily present in the former, though lacking in the latter; while the element of unlawful plan is necessarily present in the latter, though lacking in the former.

Laudenschleger pleaded guilty to conspiracy, and his plea was accepted by the court. And yet, if the offenses were legally identical, his case would be the same as that of the woman upon this indictment for conspiracy. If the discharge of Holte was justified, Laudenschlager would be left in the attitude of conspiring with himself.

But two features can be urged as differentiating her case: (1) That she could not be guilty of the main offense; and (2) that she was the person to be transported. And we have already seen that neither of these features legally distinguishes the case. (Cases cited "A" *supra*.)

As the law stood before the "White-Slave" act, any person, man or woman, who wilfully planned to commit any offense against the United States was subject to punishment under section 37. In creating the new offense (sec. 2, *supra*) Congress had no purpose to amend the conspiracy statute so that it should read "any offense against the United States, *save*

only that defined by the 'White-Slave Traffic Act;'" nor any purpose to give the woman transported, a license to *plan with others* to devote her body to prohibited sexual uses; nor any purpose to give her in advance a full pardon for any such after conspiracy. As the Treaty which the "White-Slave" act was intended to effectuate, and as the title and history of the act alike indicate, it was aimed at the suppression of a *traffic* that had assumed such large proportions as to have gained a distinctive title, both in this country and in Europe, and that involved the transportation of women from place to place for sexual uses. Before the passage of the act, no one concerned in that traffic was punishable under the *Federal* law. And after its passage, *procurers only* were punishable by *its* terms. *That* act did not concern itself with the "procured" save to protect them. Any woman, determined to this indulgence, but wishing to hide her shame from her neighbors, might *after*, as much as before, its passage, buy a ticket and journey to a neighboring State for such purpose without, by so doing, incurring the penalty prescribed by *that* act.

But, mindful of the general conspiracy statute, Congress in effect, said to the woman: "Whether you are a victim, or voluntarily acting (if acting alone), we take no notice of you save to help you, in the former case. But remember: This interstate transportation, so far as the procurer is concerned, is made a crime, and if you transport *another* woman you will be punishable under *this* act; or if you *plan* with another

for your own *unlawful transportation by that other person*, there is another statute (section 37) which automatically operates *on new* offenses from time to time, as they are created (*United States* v. *Stevenson*, 215 U. S. 202, 203; *Curley* v. *United States*, 130 Fed. 1) that will punish you, as planning for the commission by that other person of an offense against the United States.

The indictment here contains the essential averment of a plan and agreement by both defendants that Laudenschleger should commit the offense of unlawfully transporting Holte—an averment that would have no place in an indictment against the former for unlawfully transporting her. And had the indictment omitted the first, third, and fourth overt acts (showing actual after transportation), the second (the ticket purchase) alone would have completed the conspiracy offense. On trial none other than the second overt act need be proven. If the others were proven the later consummation of the main offense by Laudenschleger could not swallow up, or give immunity to, the earlier completed crime of conspiracy. (*Heike* v. *United States*, 227 U. S., 131, 144; *Curley* v. *United States*, 130 Fed., 1; *United States* v. *Stamatopolous*, 164 Fed., 524; *Solander* v. *People*, 2 Colo., 48; *State* v. *Crofford*, *supra*.) To so hold would—as was pointed out in the Government's brief in opposition to the petition for certiorari, filed in this court in the so-called *Dynamiters' case*—be, in effect, to offer a premium for multiplied crime [*Heike*

case, *supra*, (142)], and to make a second crime operate as a pardon for an earlier one.

The court below must have thought that, as the woman subject of the transportation could not have been punished before the passage of the "White-Slave" act, and as manifestly Congress had not undertaken in that act to punish *her*, but had limited the punishment to *procurers*, she could not be punished for any action of hers *related to*, or *arising from* the things prohibited by that act. The error in this line of thought is threefold. First, it overlooks the fact that there was a *general* criminal statute (sec. 37, *supra*) punishing *every* person participating *in any criminal plan*, which statute became automatically operative with respect to new offenses against the United States, as they should be from time to time created by Congress. Second, the "White-Slave" act punished the procurer for unlawful transportation. This being the new offense, anybody entering into a plan whereby the *procurer* should unlawfully transport, necessarily plans for the commission of an offense by another. (*United States* v. *Stevenson supra*, 203.) And third, though the penalty provisions of the crime punished by section 2 were limited exclusively to procurers, no corresponding limitation is to be found in section 37, which, being aimed at *every person* must apply to the defendant Holte. (*United States* v. *Portale et al.*, 235 U. S. 27; *United States* v. *Lewis*, No. 380, decided Nov. 30, 1914.)

The court below appreciated that it was necessary to find some legal path along which to transport the

immunity from punishment of the woman transported (which was an incident *only* to the offense under the "White-Slave" act), to the field occupied by the conspiracy statute; and it assumed to find this path in the doctrine of "*concursus necessarius.*" It had, as we have shown, no right to travel *this* path to reach its conclusion. The only other path available was along the doctrine of legal identity of offenses. The court below itself saw the impossibility of using the latter. It really took an "aviation" route, unknown to the law.

It is not the policy of the law to suffer people to, with impunity, jointly plan the commission of crime. (*Drew* v. *Thaw, supra.*) It is often but a step from plan to performance, and if people could, without risk, jointly plan, plans would be more frequent, and when developed, might appear so inviting as to themselves induce performance. Where, as here, the *large* purpose of the law was to reach those systematically conducting the traffic—and system always demands *plan*—there could have been no thought of making this particular crime an exception to the general prohibition of the conspiracy statute.

This view is strengthened by the thought that because practically the same language is found in sections 2 and 3 of the Immigration Act as amended March 26, 1910 (36 Stat. 263), the application of the principle here contended for would materially aid, (through the enforcement of that act also) in the accomplishment of the results sought by the Paris Conference treaty of July 25, 1902 (35 Stat. 1979).

CONCLUSION.

The court below erred in applying the exception of "necessary concert" to this case, and in holding that the facts averred in the indictment did not constitute a violation of section 37 as applied to section 2 of the "White-Slave" act. The judgment should therefore be reversed, with instructions to overrule the demurrer.

WILLIAM WALLACE, JR.,
Assistant Attorney General.

DECEMBER, 1914.